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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(LOS ANGELES DIVISION)

MARTINA URIBE; JUAN URIBE
FERNANDEZ; MARIBEL URIBE,

Plaintiffs,

VS

21ST MORTGAGE CORPORATION.

Defendant.

CASE NO. 2:15-cv-05859-MWF-AS

**DEFENDANT 21ST MORTGAGE
CORPORATION'S AMENDED
PETITION:**

(1) TO COMPEL ARBITRATION OF ALL DISPUTES PURSUANT TO A WRITTEN ARBITRATION AGREEMENT; AND

**(2) TO STAY PROCEEDINGS IN
THE FEDERAL COURT
ACTION**

DATE: October 5, 2015
TIME: 10:00 a.m.
PLACE: Ctrm 1600
312 N. Spring Street
Los Angeles, CA 90012

Complaint Filed: June 7, 2015

COMES NOW DEFENDANT, 21st MORTGAGE CORPORATION (“21st Mortgage”) which petitions this Court for an order compelling Plaintiffs,

1 MARTINA URIBE, JUAN URIBE FERNANDEZ, and MARIBEL URIBE
 2 (“Plaintiffs”) to arbitrate all disputes between Plaintiffs and 21st Mortgage pursuant
 3 to an Arbitration Agreement executed by all parties on April 8, 2008. Plaintiffs
 4 signed an Installment Contract-Security Agreement (“Security Agreement”) and an
 5 Arbitration Agreement (“Arbitration Agreement”) agreeing to submit all disputes
 6 to binding arbitration with limited discovery.

7 While Plaintiffs obtained the benefit of the Security Agreement with 21st
 8 Mortgage (and obtained their loan to acquire a mobile home), they now seek to
 9 limit the provisions of the Arbitration Agreement they each voluntarily signed.
 10 Plaintiffs have stated that they are willing to arbitrate the case, but seek to change
 11 the rules regarding (1) discovery; (2) sharing the cost of the arbitration; (3) 21st
 12 Mortgage’s right to arbitrate its claims against Plaintiffs; and (4) 21st’s Mortgage’s
 13 right to collect its attorney’s fees if it prevails in the arbitration.

14 This petition is based on this Petition, the Security Agreement and the
 15 Arbitration Agreement which are attached to the declaration of Troy Fussell, filed
 16 and served herewith and upon such other and further documents and arguments as
 17 the Court may consider in this matter. This petition is made following the
 18 conference of counsel pursuant to L.R. 7-3 which took place on July 31, 2105.

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STATEMENT OF FACTS

On April 8, 2008, Plaintiffs Martina Uribe, Juan Uribe Fernandez and Maribel Uribe (collectively "Plaintiffs") sought and obtained a manufactured home loan to acquire a 1977 Goldenwest "Sunnybrook" mobilehome, Serial No A/B777173, Decal No. LBG1166 (the "Subject Property").

In connection therewith, Plaintiffs executed the Security Agreement with 21st Mortgage. A true and correct copy of the Security Agreement is attached to the Declaration of Troy Fussell as Exhibit "1" and is incorporated herein by this reference.

Page 4 of the Security Agreement provides in the largest bold-face type on the page, in block capital letters, the following:

"ACCEPTED: BORROWER ACKNOWLEDGES THAT A SEPARATE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT (ARBITRATION AGREEMENT) IS A PART OF THIS CONTRACT."

The Security Agreement also states in a slightly smaller font and all bold-face type in block capital letters:

"NOTICE TO THE BORROWER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF CONTRACT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

ACKNOWLEDGEMENT: I AGREE TO ALL OF THE TERMS ON ALL OF THE PAGES OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.

**CAUTION: IT IS IMPORTANT THAT YOU
THOROUGHLY READ THE CONTRACT
BEFORE YOU SIGN IT."**

1 On April 8, 2008, in connection with the execution of the Security
2 Agreement, Plaintiffs signed the Arbitration Agreement. A true and correct copy
3 of the Arbitration Agreement executed by Plaintiffs and 21st Mortgage is attached
4 to the Declaration of Troy Fussell as Exhibit "2" and is incorporated herein by this
5 reference.

6 Pursuant to the provisions of the Arbitration Agreement, Plaintiffs and 21st
7 Mortgage

8 " ... mutually agree[d] to resolve any and all claims or
9 controversies for liability, damages or expenses arising
10 out of or in connection with the home, the contract
11 [Security Agreement] or any warranty representations,
12 or agreements related thereto (hereinafter referred to as
13 "Claims") by submission of such claim to binding
14 arbitration pursuant to the Federal Arbitration Act 9
15 U.S.C. §1. The Arbitration shall be conducted in
16 accordance with the American Arbitration Association's
17 commercial rules in the state in which the contract is
executed. Each party in such arbitration shall bear their
own expenses and shall be permitted to depose one
individual and any expert witness designated by another
party."

18 At the bottom of the Arbitration Agreement in large block capital letters is
19 the statement:

20 "THIS IS AN IMPORTANT LEGAL DOCUMENT. IF
21 YOU DO NOT UNDERSTAND IT, DO NOT SIGN IT
22 AND SEEK LEGAL HELP!"

23 Plaintiffs executed both the Security Agreement and the Arbitration
24 Agreement.

25 Sometime thereafter, Plaintiffs defaulted on their obligations under their
26 Security Agreement when Plaintiffs failed to make timely rental payments to the
27 mobile home park where the Subject Property was located. Payment of space rent

1 was a requirement under the terms of the Security Agreement and the Plaintiffs' 2 failure to make timely payment subjected the home to the imposition of a lien 3 senior to 21st Mortgage's lien. (Security Agreement, "Advances to Protect the 4 Home" and "Other Terms and Conditions".) Under the California Mobilehome 5 Residency Law, California *Civil Code* §798.55 et. seq., (the "MRL"), if the 6 borrower defaults on his or her obligations to the mobilehome park for space rent 7 and other charges the mobilehome park obtains the right to impose and later 8 foreclose on a warehouseman's lien which lien becomes senior to the lender. 9 (California *Civil Code* §798.56a(e)).

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Plaintiffs' Federal Court Lawsuit

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On June 7, 2015, Plaintiffs commenced a Federal Civil Court Action against 14 21st Mortgage in the Southern District of California (even though the Security 15 Agreement and Arbitration Agreement were entered into in Los Angeles County 16 and even though the Subject Property and the Plaintiffs are located in Los Angeles 17 County). 21st Mortgage is a Delaware corporation with its principal place of 18 business in Tennessee). 21st Mortgage is authorized to do business in the State of California.

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1. Plaintiffs' Claims.

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In their complaint, Plaintiffs alleged violation of the Rosenthal (California) Fair Debt Collection Practices Act ("RFDCPA"), the Telephone Communications Practices Act ("TCPA") Intrusion upon Seclusion, Negligence and Negligent Training and Supervision (the "Plaintiffs' Claims").

2. 21st Mortgage's Claims against Plaintiffs

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21st Mortgage has a claim against Plaintiffs in the sum of \$63,178.43. Said claim is based on Plaintiffs' breach of contract when 21st Mortgage became a sold out junior lienholder on the mobile home loan when the mobile home park, which

1 evicted Plaintiffs, conducted a warehouseman's lien sale pursuant to California
 2 *Civil Code* §798.56a(e). ("21st Mortgage's claims"). Pursuant to California *Civil*
 3 *Code* §798.56a(e), the mobilehome park's lien becomes senior to all liens except
 4 liens from the State of California

5 **3. Stipulation for Change of Venue**

6 At the request of 21st Mortgage, the parties stipulated to a change of venue
 7 to the Central District of California where the case was assigned Case No. 2:15-
 8 CV-05859.

9 **4. Arbitration.**

10 21st Mortgage also sought a stipulation to submit the case to binding
 11 arbitration pursuant to the Arbitration Agreement. While Plaintiffs initially agreed
 12 to arbitrate the case, Plaintiffs thereafter demanded that (a) 21st Mortgage's claims
 13 against Plaintiffs be excluded; (b) the limited discovery provided for in the
 14 Arbitration Agreement be modified by the Arbitrator; (c) 21st Mortgage pay all or
 15 substantially all of the Arbitration Fees; and (d) 21st Mortgage waive its attorneys'
 16 fees claims if it is the prevailing party.

17 Plaintiffs refused to sign the stipulation unless it contained all of the
 18 concessions they demanded.

19 Based on Plaintiffs' refusal to sign a stipulation to submit this matter to
 20 arbitration, 21st Mortgage hereby moves this Court for an order compelling
 21 arbitration pursuant to the provisions of the Arbitration Agreement and the Federal
 22 Arbitration Act, 9 U.S.C. §1, *et seq.*

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 24 **MEMORANDUM OF POINTS AND AUTHORITIES**

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 26 **1. The Arbitration Agreement is enforceable under the Federal**
 27 **Arbitration Act.**

1 In *Davis v. Nordstrom, Inc.* (9th Cir. 2014) 755 F3d 1089, the 9th Circuit
 2 Court of Appeal held that an agreement to arbitrate under 9 U.S.C. 1, *et seq.* is
 3 enforceable.

4 The Federal Arbitration Act ("FAA"). 2 U.S.C. §§ 1, *et seq.*,
 5 reflects a "liberal federal policy" in favor of arbitration,
 6 *Concepcion*, 131 S. St. at 1745. Under the FAA, the role of
 7 the district court is to determine if a valid arbitration
 8 agreement exists, and if so, whether the agreement
 encompasses the dispute at issue. *Kilgore*, 718 F.3d at
 1057-58.

9 *Davis v. Nordstrom, supra*, 755 F.2d 1089, 1092.

10 In *Shearson/Am. Express v. McMahon*, 482 U.S. 220, 226-27,
 11 107 S.Ct. 2332, 2337-38 (1987), the United States Supreme Court
 12 held that:

13 "The Arbitration Act thus establishes a "federal policy
 14 favoring arbitration," *Moses H. Cone Memorial Hospital v.*
 15 *Mercury Construction Corp.*, 460 U.S. 1, 24 (1983),
 16 requiring that "we rigorously enforce agreements to
 17 arbitrate." *Dean Witter Reynolds Inc. v. Byrd*, *supra*, at
 18 221. This duty to enforce arbitration agreements is not
 19 diminished when a party bound by an agreement raises a
 20 claim founded on statutory rights. As we observed in
 21 *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*,
 22 "we are well past the time when judicial suspicion of the
 23 desirability of arbitration and of the competence of arbitral
 24 tribunals" should inhibit enforcement of the Act "'in
 25 controversies based on statutes.'" 473 U.S., at 626-627,
 26 quoting *Wilko v. Swan*, *supra*, at 432. Absent a well-
 27 founded claim that an arbitration agreement resulted from

1 the sort of fraud or excessive economic power that "would
 2 provide grounds 'for the revocation of any contract,'" 473
 3 U.S., at 627, the Arbitration Act "provides no basis for
 4 disfavoring agreements to arbitrate statutory claims by
 5 skewing the otherwise hospitable inquiry into
 6 arbitrability." *Ibid.*

7 "The Arbitration Act, standing alone, therefore mandates
 8 enforcement of agreements to arbitrate statutory claims.
 9 Like any statutory directive, the Arbitration Act's mandate
 10 may be overridden by a contrary congressional command.
 11 The burden is on the party opposing arbitration, however,
 12 to show that Congress intended to preclude a waiver of
 13 judicial remedies for the statutory rights at issue. See *id.*, at
 14 628. If Congress did intend to limit or prohibit waiver of a
 15 judicial forum for a particular claim, such an intent "will
 16 be deducible from [the statute's] text or legislative history,"
 17 *ibid.*, or from an inherent conflict between arbitration and
 18 the statute's underlying purposes. See *id.*, at 632-637; *Dean*
 19 *Witter Reynolds Inc. v. Byrd*, 470 U.S., at 217.

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 21 *Shearson/Am. Express v. McMahon*, 482 U.S. 220, 226-27, 107 S.Ct. 2332, 2337-
 22 38 (1987).

23 In the case at bar, Plaintiffs sought and obtained a loan from 21st Mortgage
 24 to finance the purchase of the Subject Property.

25 Plaintiffs specifically entered into the Arbitration Agreement after being
 26 warned in both the Security Agreement and the Arbitration Agreement they signed
 27 to obtain their loan and their mobilehome about the rights and obligations under

1 the Arbitration Agreement.

2 Plaintiffs who accepted the benefits of the loan agreement by obtaining title
 3 to the Subject Property and obtaining the loan from 21st Mortgage now seek to
 4 avoid their obligations under the Arbitration Agreement and/or seek to
 5 change/avoid the rules they agreed to with regard to discovery and arbitrability.

6 There has been no waiver of any rights to arbitrate 21st Mortgage's claims
 7 and 21st Mortgage should be entitled to have its claims arbitrated in the same
 8 manner as Plaintiffs' claims.

9 In this case, there are two disputes- Plaintiffs' Claims and 21st Mortgage's
 10 claims and both should be arbitrated. Both Plaintiffs' Claims and 21st Mortgage's
 11 Claims constitute "any and all claims or controversies for liability, damages or
 12 expenses arising out of or in connection with the home, the contract or any
 13 warranties, representations or agreements related thereto," and 21st Mortgage is
 14 entitled to have all claims be decided at arbitration.

15 For these reasons, it is respectfully requested that this Court compel
 16 Plaintiffs (and 21st Mortgage) to submit **all claims** to binding arbitration in
 17 accordance with the provisions of the Arbitration Agreement.

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19 **2. 9 U.S.C. §4 permits the aggrieved party to seek an order**
 20 **compelling arbitration.**

21 A party aggrieved by the alleged failure, neglect, or refusal of
 22 another to arbitrate under a written agreement for Arbitration
 23 may petition any United States District Court which, save for
 24 such agreement, would have jurisdiction under Title 28 [28
 25 USCS §§ 1 et seq.] in a civil action or in admiralty of the
 26 subject mailer of a suit arising out of the controversy between
 27 the parties, for an order directing that such arbitration proceed
 28 in the manner provided for in such agreement. Five days'
 notice in writing of such application shall be served upon the
 party in default. Service thereof shall be made in the manner

1 provided by the Federal Rules of Civil Procedure [USCS Rules
 2 of Civil Procedure]. The court shall hear the parties, and
 3 upon being satisfied that the making of the agreement for
 4 arbitration or the failure to comply therewith is not in issue, the
 5 court shall make an order directing the parties to proceed to
 6 arbitration in accordance with the terms of the agreement. The
 7 hearing and proceedings, under such agreement, shall be within
 8 the district in which the petition for an order directing such
 9 arbitration is filed.

10 As set forth above, Plaintiffs received the benefits of their loan agreement
 11 and agreed to comply with the rules set forth in the Arbitration Agreement.
 12 Therefore, Plaintiffs should be compelled to have this matter and all claims
 13 decided by an arbitrator pursuant to the provisions of the Arbitration Agreement.

14 **2. 9 U.S.C. § 3 permits the Court to stay Federal Court Proceedings
 pending completion of arbitration.**

15 If any suit or proceeding be brought in any of the courts of the
 16 United States upon any issue referable to arbitration under
 17 an agreement in writing for such arbitration, the court in which
 18 such suit is pending, upon being satisfied that the issue
 19 involved in such suit or proceeding is referable to arbitration
 20 under such an agreement, shall on application of one of the
 21 parties stay the trial of the action until such arbitration has been
 22 had in accordance with the terms of the agreement,
 23 providing the applicant for the stay is not in default in
 24 proceeding with such arbitration.

25 As set forth above, the parties voluntarily entered into the binding
 26 Arbitration Agreement to resolve almost all disputes (except eviction/repossession
 27 which are not at issue in this case). Plaintiffs received the benefits of the Security
 28 Agreement and obtained a loan but now seek to avoid or alter their obligations
 thereunder. This matter should be ordered to binding arbitration pursuant to the
 terms set forth in the Arbitration Agreement.

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1 Pending the completion of the arbitration, Plaintiffs' Federal Court action
2 should be stayed pursuant to 9 U.S.C. § 3.

3 ALPERT, BARR & GRANT
4 A Professional Law Corporation

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6 Dated: September 2, 2015
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By:

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9 MARK S. BLACKMAN
10 Attorneys for Defendant 21st
11 MORTGAGE CORPORATION
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MARTINA URIBE, et al. V. 21st MORTGAGE CORPORATION
USDC, CENTRAL DISTRICT OF CALIFORNIA Case No. 2:15-cv-05859-MWF-AS

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6345 Balboa Boulevard, Suite I-300, Encino, California 91316-1523.

On September 4, 2015, I served the following document described as **DEFENDANT 21ST MORTGAGE CORPORATION'S AMENDED PETITION: (1) TO COMPEL ARBITRATION OF ALL DISPUTES PURSUANT TO A WRITTEN ARBITRATION AGREEMENT; AND (2) TO STAY PROCEEDINGS IN THE FEDERAL COURT ACTION** on the persons on the attached Service List in this action, as follows:

[X] By E-mail or Electronic Transmission. I hereby certify that on September 2, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Attorneys for Plaintiffs MARTINA URIBE, JUAN URIBE FERNANDEZ, MARIBEL URIBE

Ronald Wilcox
Email: ronaldwilcos@gmail.com

Ivan Lopez Ventura
Email: lopezesq@gmail.com

Executed on September 4, 2015, at Encino, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Leah Browitt

Type or Print Name



Signature